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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7050/2024 & CM APPL. 29389-29391/2024**

AJAY KUMAR & ORS.

..... Petitioners

Through: Mr. Akash Khurana, Advocate with
Mr. Vipul Lamba, Mr. Akshita and
Mr. Parth, Advocates

Versus

**DELHI DEVELOPMENT AUTHORITY THROUGH VICE
CHAIRMAN**

..... Respondent

Through: Mr. Birbal, Mr. Varun Gupta,
Advocates for DDA
Mob: 9958118327

**CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA**

ORDER

% 16.05.2024

CM APPL. 29390-29391/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.
2. Application is disposed of.

W.P.(C) 7050/2024 & CM APPL. 29389/2024

3. The present petition has been filed praying for setting aside of the Diwali Special Housing Scheme, 2023 to the extent that the Delhi Development Authority ("DDA") has invited online application for disposal of the entire 100% EWS housing stock, i.e., 1008 EWS flats on first-come-first-serve basis, without retaining, reserving and offering 50% of the EWS



housing stock, i.e., 504 dwelling units to the petitioners and other allottees/apartment owners of Pocket 5, Sector 14, Dwarka.

4. It is submitted that the petitioners are the allottees of MIG and LIG dwelling units that have been constructed in group housing constructed by DDA in Pocket 5, Sector 14, Dwarka. The said dwelling units have been constructed and allotted by DDA to the petitioners under the two Schemes namely, Diwali Special Housing Scheme, 2023, through E-auction and Diwali Special Housing Scheme, 2023, in which the flats were sold on first-come-first-serve basis.

5. It is submitted that in the Diwali Special Housing Scheme, 2023, DDA, additionally, *inter alia*, invited online applications from public for the purposes of allotment, of all 1008 EWS Flats, on first-come-first-serve basis, situated in the said Sector 14, Dwarka.

6. It is submitted that the said action of DDA is completely arbitrary and illegal in nature and liable to be quashed, as the same is in complete violation of the notifications dated 13th April, 2013 and 23rd September, 2013, as per which, DDA ought to have retained, reserved and offered 50% of the aforementioned EWS housing stock of 1008 dwelling units, i.e., 504 dwelling units, specifically only to the petitioners and other apartment owners of Pocket 5, Sector 14, Dwarka.

7. Attention of this Court has been drawn to the order dated 6th February, 2024 passed in *W.P.(C) No. 1607/2024*, wherein, the following order has been passed:

“xxx xxx xxx

3. By way of the present petition, the petitioners have raised their grievance against the action of the respondents by putting the flats for Economically Weaker Section (“EWS”), constructed in pursuance of



notifications dated 13th April, 2013 and 23rd September, 2013 for allotment on “first come first serve basis” without offering 50% of the same to the successful bidders under the E-Auction Scheme.

4. It is submitted that respondent no. 1/Delhi Development Authority (“DDA”) floated the “Diwali Special Housing Scheme, 2023” e-auctioning 2093 newly constructed flats of various categories at Sector 19-B Dwarka, New Delhi. The petitioners were declared as H1 bidders in the e-auction for the respective flats in Sector 19-B Dwarka. Subsequently, DDA issued a Circular dated 27th January, 2024 announcing that all the 728 flats in Sector 19-B Dwarka that have been constructed under the EWS category in tower “L” and tower “M” would be allotted on “first come first serve basis” and the process for allotment would commence from 11 A.M. on 07th February, 2024.

5. Ms. Sonia Arora, learned counsel appearing for the petitioners submits that the 728 flats under the EWS have been constructed in pursuance to the notification dated 13th April, 2013 and 23rd September, 2013 issued by the Ministry of Urban Development, which makes it mandatory for the respondent no. 1/DDA to reserve 50% of these flats to be offered to the purchasers of residential units at Sector 19-B Dwarka, New Delhi. Thus, it is submitted that the respondents without offering 50% of the flats to the successful bidders, have announced the allotment of these EWS flats in open market on first-come-first-serve basis. Despite the requests made to the respondents to make the allotment of the EWS category flats strictly in consonance with the terms of the notification and changes made to the Master Plan 2021, no clarification has been issued to the petitioners qua the same.

6. Issue notice. Notice is accepted by learned counsel appearing for the respondents.

7. Ms. Shobhana Takiar, learned Standing Counsel for respondent no. 1/DDA submits on instructions that out of the two towers, i.e., tower “L” and tower “M” of the EWS flats, e-auction on “first-come-first-serve basis” shall be carried out only with respect to one tower.

8. The aforesaid statement made by learned standing counsel for the DDA is duly noted by this Court and the respondents are held bound by the same.

9. Accordingly, it is clarified that out of the 728 flats which are stated to exist in tower “L” and tower “M” under the EWS category, the DDA shall carry out the e-auction on “first-come-first-serve basis” only with respect to 364 flats.

10. Per contra, learned counsel appearing for the petitioner submits that it is tower “M” which is more suitable for the purposes of the



petitioners. However, learned Standing Counsel for DDA submits that she has no instructions with regard to whether it is tower “L” or tower “M” on which the e-auction on “first-come-first-serve basis” shall be carried out.

11. Let reply be filed within by the respondents within a period of two weeks. Rejoinder thereto, if any, be filed within two days thereafter.

12. List on 06th March, 2024.”

8. Learned counsel appearing for the petitioner has also drawn the attention of this Court to the Frequently Asked Questions (“FAQs”) on EWS housing, wherein, in reply to the question with respect to percentage of share between the Developers Entity (“DE”) and DDA, it has been answered that 50% of the EWS housing shall be retained by Developers Entity (“DE”) that shall be disposed, only to the apartment owners at market rates.

9. The relevant portion of the FAQ on EWS housing, reads as under:

“xxx xxx xxx

Ques-2: What is the percentage of share between Developers Entity(DE) and DDA ?

Ans: 50% of the EWS housing shall be retained by Developers Entity (DE) and dispose only to the apartment owners, at market rates, to housing community service personnel (SP) working for the residents/ owners of the Group Housing. This will be developed by DE at the respective Group Housing Sites premises or contiguous site. Remaining 50% of the DUs developed by the DE to be sold to DDA for EWS Housing purpose will be sold to DDA/Local Bodies at base cost of Rs. 2,000/- per Sq. Ft as per CPWD index of 2,300(+Cost of EWS Parking) which shall be enhanced as per CPWD Regulation index at the time of actual handing over and can be developed by DE at an alternative near by Site.

xxx xxx xxx”

10. Thus, it is submitted that 50% of the EWS flats ought to have been reserved by the DDA for disposal to the apartment owners at market rates.

11. Learned counsel appearing for the petitioners also relies upon the notification dated 23rd September, 2013 issued by the Ministry of Urban



Development, which reads as under:

**“MINISTRY OF URBAN DEVELOPMENT
(Delhi Division)**

NOTIFICATION

New Delhi, the 23rd September, 2013

S.O. 2889(E). -Whereas the Central Government, after carefully considering all aspects of the matter related to Land Policy, decided to modify the Master Plan for Delhi-2021 vide SO N.2687(E) dated 06.09.2013. Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes corresponding modifications in the Para 4.4.3B. Residential Plot-Group Housing, with effect from the date of publication of this Notification in the Gazette of India

2. The modified text in Para 4.4.3 B. Residential Plot-Group Housing regarding modifications in the Master Plan for Delhi-2021, is as under:

B. Residential Plot - Group Housing

Minimum size of plot	3000 sqm.
Maximum Ground Coverage	33.3%
Maximum FAR	
Height.	NR (subject to clearance from AAI/Fire Dept. and other statutory bodies).
Parking	2.0 ECS/100 sqm. built up area and 0.5 ECS/100 sqm. for EWS/Service Personnel housing.

(v) The developer shall ensure that minimum 15% of the proposed FAR to be constructed for Community-Service Personnel/ EWS and lower category. Such flats should have a carpet area between 25-40 sqm. This 15% of the proposed FAR for Community Service Personnel/EWS and lower category housing would be over and above 200 permissible FAR and density of 200 DUs. Employer Housing of Central Government. State Government and other Government Agencies are not required to follow the requirement of FAR or Dwelling Units for Community Service Personnel/EWS and lower income category 50% of the EWS Housing Stock shall be retained by Developer Entity (DE) and disposed only to the Apartment owners, at market rates, to house Community Service Personnel (CSP) working for the Residents/Owners of the Group Housing. These will be developed by DE at the respective Group Housing site/premises or contiguous site. Remaining 50% of DUs developed by DE to be sold to



DDA for EWS housing purpose will be sold to DDA/ Local Bodies at base cost of Rs. 2000 per sq. ft. as per CPWD index of 2013 (plus cost of EWS parking) which shall be enhanced as per CPWD escalation index at the time of actual handing over and can be developed by DE at an alternate nearby site. Necessary commercial and PSP facilities shall also be provided by the DE for this separate housing pocket. The EWS housing component created by the DE shall be subject to quality assurance checks, as prescribed in this regard by Govt/DDA. The final handing/taking over of this component shall be subject to fulfilling the quality assurance requirements. The DE shall be allowed to undertake actual transfer/transaction of sealable component under its share/ownership to the prospective buyers only after the prescribed land arid EWS housing component is handed over to the DDA.

xxx xxx xxx”

12. Issue notice. Notice is accepted by learned counsel appearing for respondent-DDA.
13. Learned counsel appearing for DDA submits that the present petition has been filed in a belated manner, as the notification for the E-auction was floated in November, 2023.
14. He further submits that third party rights may have been created by now and therefore, it would be unfair to the persons in whose favour third party rights have already been created.
15. He further submits that the said persons, in whose favour third party rights have been created, have not been made a party before this Court.
16. Learned counsel appearing for the DDA further submits that the notification with respect to 50% of the flats being reserved for the apartment owners, refers to the DE and not the DDA.
17. Let reply be filed within a period of four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.
18. Considering the submissions made before this Court, it is directed that 50% of the EWS housing stock, i.e., 504 EWS dwelling units situated in



Pocket 5, Sector 14, Dwarka, shall be reserved for the residents of Pocket 5, Sector 14, Dwarka, till the next date of hearing.

19. List on 28th October, 2024 along with W.P.(C) 1607/2024.

MINI PUSHKARNA, J

MAY 16, 2024
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